

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Timothy V. Stagg et al.

Examiner: Robert A. Madsen

Serial No.: 09/728,697

Group Art Unit: 1761

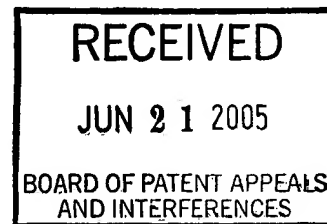
Filed: December 1, 2000

Docket No.: M120.131.101 (54186US017)

**Due Date: June 21, 2005**

Title: PLASTIC FILM PACKAGING WITH TEARABLE TAPE STRIP

Board of Patent Appeals and Interferences  
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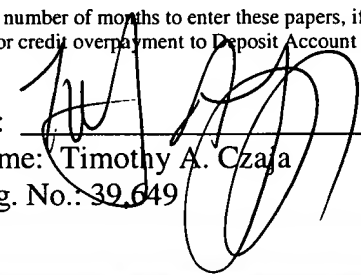


Sir/Madam:

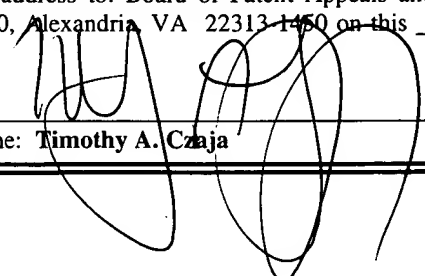
We are transmitting herewith the attached:

- ☒ Transmittal Sheet containing Certificate of Mailing (1 pg.).
- ☒ Appellant's Reply Brief to Examiner's Answer Under 37 C.F.R. §41.41 (6 pgs.).
- ☒ Return Postcard.

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By:   
Name: Timothy A. Czaja  
Reg. No.: 39,649

The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope address to: Board of Patent Appeals and Interferences, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450 on this 15th day of June, 2005.

By:   
Name: Timothy A. Czaja

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

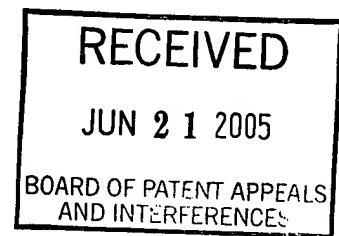
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**APPELLANT'S REPLY BRIEF TO EXAMINER'S ANSWER UNDER 37 C.F.R. §41.41**

Board of Patent Appeals and Interferences  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir/Madam:



This Reply Brief is presented in response to the Examiner's Answer dated April 21, 2005.

**Reply Brief to the Board of Patent Appeals and Interferences of the U.S. Patent and Trademark Office**

Applicant: Timothy V. Stagg et al.

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Title: PLASTIC FILM PACKAGING WITH TEARABLE TAPE STRIP

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**I. Rejection of Independent Claims 1, 17, and 38 (and Various Claims Depending Therefrom) under 35 U.S.C. §103(a) as Being Unpatentable Over Riddell (US 4,773,541) in View of Osborn (US 4,397,703).**

It is respectfully submitted that the Examiner incorrectly interprets Riddell as effectively suggesting that virtually any film could be used in place of the disclosed kraft paper packaging material (in conjunction with the disclosed tear tape system). To the contrary, Riddell teaches that not only must the packaging material provide “necessary shipping and display stiffness and durability,” but must also have sufficiently low tear strength to permit opening of the package (Riddell, col. 2, ll. 13-15). Inherently, then, Riddell teaches that its tear tape opening system or means 5 is only useful with a packaging material having a low tear strength. Riddell instructs that paper and oriented polypropylene films satisfy this low tear strength requirement. (Riddell, col. 2, ll. 15-17). This comports with the pending application, whereby biaxially oriented polypropylene is described as a low tear strength film, and thus does not exhibit a puncture-propagation tear resistance in excess of 20 N/ply. (Application, pg. 3, ll. 19-31). It is agreed that Riddell generally references “polyethylene films” as also meeting this low tear strength requirement (Riddell, col. 2, ll. 15-17). However, when read in proper context<sup>1</sup>, suitable “polyethylene films” according to Riddell are those that are analogous to paper and oriented polypropylene films in terms of low tear strength. Obviously, a vast number of widely-differing materials fall under the general categorization of “polyethylene films”. Some of these polyethylene films can be used with the Riddell tear tape system, and in particular those that have a low tear strength akin to paper and oriented polypropylene films. Conversely, other “polyethylene films,” such as the 6 mil LDPE of Osborn, have a high tear strength and thus, by Riddell’s own teachings, would not be suitable. The low tear strength requirement of Riddell is in direct opposition to the high tear strength materials of Osborn, such that a requisite suggestion to modify Riddell in view of Osborn does not exist.

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<sup>1</sup> The relevant passage of Riddell is “The packaging material can be any material which provides the necessary shipping and display stiffness and durability yet has sufficiently low tear strength to permit opening of the package. Suitable packaging materials include paper, polyethylene films, oriented polypropylene films, etc.”

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For the same reasons described above, a likelihood of success in using the 6 mil LDPE film of Osborn as the packaging material of Riddell cannot be shown. Simply stated, because the tear tape system 5 of Riddell can only work with a low tear strength packaging material, when applied to the 6 mil LDPE of Osborn, the Riddell system 5 will not work. Pointedly, the opening means 5 of Riddell requires both a guide tape 8 affixed to the outside of the package in parallel juxtaposition with a pull strip 9 affixed to the inside of the package (Riddell, col. 3, lines 4-8). As shown in FIG. 3, the guide tape 8 is internally tearable. However, Riddell does not teach that the guide tape 8 can, in and of itself, accomplish desired tearing of even the low tear strength packaging material 7. Instead, the pull strip 9 is required. Pulling of the pull strip 9 effectuates tearing of the packaging material 7, with the guide strip 8 serving to simply control tearing of the packaging material 7. Thus, if the guide strip 8 of Riddell is viewed as the “tearable tape strip” of claims 1, 17, and 38, this guide strip 8 is not configured to controllably tear an opening through an even low tear strength film, let alone a film having a puncture-propagation tear resistance of at least 20 N/ply as recited in the independent claims. Conversely, the pull strip 9 is not internally tearable, and thus does not teach the “tearable tape strip” limitations of claims, 1, 17, and 38. The second embodiment of Riddell (as shown in FIG. 5) is similarly limited. Thus, not only does Riddell teach away from the asserted combination, but the resultant combination does not teach or suggest all of the limitations of claims 1, 17, and 38.

In summary, the guide tape 8/pull strip 9 tear tape system of Riddell does not teach the “tearable tape strip” limitations of claim 1. Riddell’s requirement of “low tear strength” packaging material teaches away from the 6 mil LDPE of Osborn. Even if combined, the tear tape system 5 of Riddell is not likely to successfully work with the 6 mil LDPE of Osborn, nor will the guide strip 8 alone be successful. In light of the above, and further in view of previously-submitted arguments, it is respectfully submitted that independent claims 1, 17, and 38 are allowable over Riddell in view of Osborn such that all rejections based upon Riddell in view of Osborn should be withdrawn.

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**II. Rejection of Independent Claims 1, 17, and 38 (and Various Claims Depending Therefrom) Under 35 U.S.C. §103(a) as Being Unpatentable Over Underwood (US 3,179,326) in View of Osborn and Leseman (US 5,080,957)**

Appellant respectfully reasserts all arguments set forth in the previously-filed Appeal Brief. The thermoplastic wrapping films envisioned by Underwood in no way suggest usefulness with conventional commercial sack materials used to loosely hold large quantities of particulate material such as corn, grain, etc., in 25-100 pound lots. Thus, a requisite suggestion to modify Underwood to incorporate the bag materials of Osborn does not exist.

In addition, it is noted that Underwood has two primary components: a thermoplastic wrapping film and a tear tape. The asserted obviousness rejection replaces both of these components. This obliteration of the teachings of Underwood defeats the purpose of Underwood, thus dictating against the asserted combination. Further, a clear objective of Underwood is to “provide a highly uniaxially oriented crystalline polyolefin film for use as a tear tape”. (Underwood, col. 1, ll. 38-40). Substituting the entirely different tape construction of Leseman would defeat this unambiguous objective, thus rendering Underwood unsatisfactory for its intended purpose. Further, Leseman does not teach or suggest a tearable tape strip. Instead, Leseman is simply a reinforced pressure-sensitive adhesive tape. (Leseman, col. 1, ll. 6-9). Thus, if the pressure-sensitive adhesive tape of Leseman were substituted for the tear tape of Underwood, the resulting combination does not satisfy the “tearable tape strip” requirement of claims 1, 17, and 38. Even further, Underwood teaches that for a tear tape to properly function with thermoplastic films, it must exhibit an extremely high tensile strength (Underwood, col. 6, ll. 39-46). That is to say, Underwood directly correlates high tensile strength with proper performance as a tear tape. To this end, the highly oriented crystalline polyolefin tear tapes of Underwood are described as having a tensile strength on the order of 30,000 psi to 89,000 psi. (Underwood, col. 1, ll. 61-64). In contrast, the adhesive tapes of Leseman are described as having tensile strengths in the range of about 185-220 lbs/in. (Leseman, Tables 1 and 3). Notwithstanding the possible unconventional characterization in Leseman of tensile strength (in terms of lbs/in versus more conventional lbs/in<sup>2</sup>), it is clear that the tensile strength associated with the tear tape of Underwood far exceeds that of Leseman. Because Underwood views high

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tensile strength as being a required attribute of a functional tear tape, one of ordinary skill would view Underwood as teaching away from the low tensile strength adhesive tapes of Leseman. Thus, a requisite suggestion to modify Underwood in view of Leseman does not exist.

In light of the above, and further in view of previous arguments, it is respectfully asserted that claims 1, 17, and 38 are not made obvious by Underwood in view of Osborn and further in view of Leseman. Thus, all rejections based upon Underwood in view of Osborn and Leseman should be withdrawn.

**CONCLUSION**

For the above reasons and for the reasons presented in the previously-submitted Appellant Brief on Appeal, Appellant respectfully submits that the cited art does not render the claimed inventions obvious. Therefore, Appellant respectfully submits that the above rejections to pending claims 1, 2, 4-9, 11, 13-18, 20-25, 27, 29-33, 35-39, 41, 42, 44-52, and 56 must be withdrawn and that these claims be allowed.

Any inquiry regarding this Appeal Brief to the Board of Patent Appeals and Interferences of the United States Patent and Trademark Office should be directed to Melissa E. Buss at Telephone No. (651) 736-7421, Facsimile No. (651) 736-3833. In addition, all correspondence should continue to be directed to the following address:

**Reply Brief to the Board of Patent Appeals and Interferences of the U.S. Patent and Trademark Office**

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Respectfully submitted,

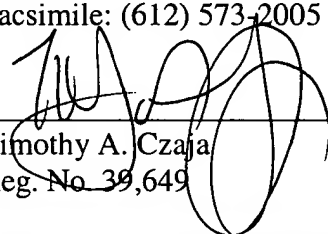
Timothy V. Stagg et al.,

By their attorneys,

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Dated: JUNE 15, 2005

TAC:jmc

  
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Timothy A. Czaja  
Reg. No. 39,649

**CERTIFICATE UNDER 37 C.F.R. 1.8:**

The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope address to: Board of Patent Appeals and Interferences, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450 on this 15<sup>th</sup> day of June, 2005.

By 

Name: Timothy A. Czaja